BEFORE THE OFFICE OF TAX APPEALS STATE OF CALIFORNIA

ΙN	THE	MATTER	OF	THE	APPEAL	OF,)			
)			
Т.	GLAS	SSER,)	OTA	NO.	20025852
)			
				A.	PPELLAN'	Т.)			
)			
)			

TRANSCRIPT OF VIRTUAL PROCEEDINGS

State of California

Tuesday, November 16, 2021

Reported by: ERNALYN M. ALONZO HEARING REPORTER

1	BEFORE THE OFFICE OF TAX APPEALS					
2	STATE OF CALIFORNIA					
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5	IN THE MATTER OF THE APPEAL OF,)					
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8	APPELLANT.))					
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14	Transcript of Virtual Proceedings,					
15	taken in the State of California, commencing					
16	at 9:44 a.m. and concluding at 9:58 a.m. on					
17	Tuesday, November 16, 2021, reported by					
18	Ernalyn M. Alonzo, Hearing Reporter, in and					
19	for the State of California.					
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1	APPEARANCES:	
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3	Panel Lead:	ALJ AMANDA VASSIGH
4	Panel Members:	ALJ MIKE LE
5	raner members.	ALJ ANDREW WONG
6	For the Appellant:	STEVEN S. GLICK
7		
8	For the Respondent:	STATE OF CALIFORNIA FRANCHISE TAX BOARD
9		PETER KWOK DAVID HUNTER
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3	<u>E X</u>	CHIBITS
4	4	
5	(Appellant's Exhibits 1-8	8 were received at page 8.)
6	(Department's Exhibits A-	-C were received at page 8.)
7	7	
8	<u>P.</u>	RESENTATION
9)	DA CE
10		<u>PAGE</u>
11		9
12	By Mr. Kwok	11
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California; Tuesday, November 16, 2021
9:44 a.m.

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JUDGE VASSIGH: We're opening the record in the Appeal of Glasser. This matter is being held before the Office of Tax Appeals. The OTA Case Number is 20025852. Today's date is Tuesday, November 16, 2001, and the time is 9:44 a.m. 2021 is the year, excuse me. This hearing is being conducted electronically with the agreement of all the parties.

Today's hearing is being heard by a panel of three Administrative Law Judges. My name is Amanda

Vassigh, and I will be the lead Judge. I'm joined by my co-panelists, Judge Le and Wong. All three of us will meet after the hearing and produce a written decision as equal participants. Although I will conduct the hearing, any judge on this panel may ask questions or otherwise participate to ensure that we have all the information necessary to decide this appeal.

For the record, will the parties please state their names and who they represent, starting with the representatives for the Franchise Tax Board?

MR. KWOK: Good morning, Judge Vassigh. I am Peter Kwok for the Franchise Tax Board.

JUDGE VASSIGH: Good morning.

1 MR. HUNTER: Good morning, Judge Vassigh. 2 Hunter for the Franchise Tax Board. 3 JUDGE VASSIGH: Good morning. And for the representative for the Appellant, can 4 5 you please introduce yourself. Star 6 will help you 6 unmute. 7 MR. GLICK: I am Steven Glick, the representative for the late Danny Thomas Glasser. 8 9 JUDGE VASSIGH: Thank you. Good morning, 10 Mr. Glick. 11 Okay. We had a prehearing conference in this 12 matter, and the parties indicated that they do not intend on calling any witnesses today. The parties have been 13 14 emailed the electronic exhibit binders containing all submitted exhibits. At this point neither of the parties 15 16 have objected to any exhibits. The exhibits for this 17 appeal consist of Franchise Tax Board's exhibits numbered 18 A through C. 19 Are these the correct exhibits FTB intends to 20 submit into the record? I see --21 MR. KWOK: Yes, it is. 22 JUDGE VASSIGH: Thank you. I saw nodding heads. 23 Thank you, Mr. Kwok, for confirming. 2.4 This is Judge Vassigh again. And for the

taxpayer, Appellant's exhibits have been numbered 1

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through 8.

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Mr. Glick, are these the correct exhibits your client intends to submit into the record? Mr. Glick, go ahead press star -- oh, you got it.

MR. GLICK: Yes.

JUDGE VASSIGH: Okay. Thank you.

We have two issues to be heard today. The issues to be decided in this case are first, whether Appellant is entitled to exclude capital gains derived from the disposition of inherited property in 2013 for California tax purposes. The second issue is whether FTB's assessment is barred by the statute of limitations.

As a reminder to the parties, during our prehearing conference we decided that Mr. Glick will have 5 minutes to make and opening presentation. The parties will each have 10 minutes to make their arguments, and Mr. Glick will have 5 minutes at the end to provide a rebuttal, if he chooses.

Does anyone have any questions before we move on to the opening presentations?

MR. KWOK: No, Judge.

JUDGE VASSIGH: Okay. Mr. Glick?

MR. GLICK: No objection.

JUDGE VASSIGH: Thank you. I have a question for you, Mr. Glick. Will you be testifying as to any facts in

1	this case?
2	MR. GLICK: Possibly, yes.
3	JUDGE VASSIGH: Okay. So for that purpose I will
4	swear you in so we can consider your remarks as testimony.
5	I would like to first admit into the evidentiary
6	record the exhibits that I summarized earlier.
7	(Appellant's Exhibits 1-8 were received
8	in evidence by the Administrative Law Judge.)
9	(Department's Exhibits A-C were received in
10	evidence by the Administrative Law Judge.)
11	Okay. So Mr. Glick, please raise your right hand
12	after you unmute yourself.
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14	STEVEN GLICK,
15	produced as a witness, and having been first duly sworn by
16	the Administrative Law Judge, was examined and testified
17	as follows:
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19	JUDGE VASSIGH: Thank you. We are ready to
20	proceed with Appellant's opening statement. Mr. Glick,
21	this is your opportunity to tell us the reasons for this
22	appeal. When you are ready, please begin your
23	presentation and any testimony.
24	MR. GLICK: I'm ready now.
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PRESENTATION

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MR. GLICK: We withdraw the claim and admit that we did not include in taxable income \$191,880 of capital gains. Now, we strongly affirm that this was not — the taxes were not properly assessed during the five-year — excuse me — during the four-year assessment period. The return was due on April 14th, 2018, and the latest notice of — dated 4/22/18 strongly printed on it, which is the Exhibit C, that this is not a bill.

Now, our intention is that the tax was not assessed during the period of four-year -- four-year statute period to assess the tax, which normally began on the filing date April 14th, 2014. Our contention is that is not properly taxed during the four-year period. And the notice dated 4/22/18 is not an assessment, and it clearly states it's not a bill.

That ends my opening statement.

JUDGE VASSIGH: Thank you, Mr. Glick. I would like to confirm it sounds like you concede the first issue in this matter whether Appellant is entitled to exclude capital gains in 2013 for California tax purposes. You are withdrawing that argument and concede that point; correct?

MR. GLICK: Yes, that is correct. I agree to the amount was not reported, but I strongly say that the tax

1 was not properly assessed during the four-year tax 2 limitations period. 3 JUDGE VASSIGH: Thank you, Mr. Glick. Do we have in questions from my co-panelists? 4 5 Judge Wong, do you have any questions for Mr. Glick? 6 JUDGE WONG: This is Judge Wong. I have no 7 questions. Thank you. 8 JUDGE VASSIGH: Thank you. 9 This is Judge Vassigh. Judge Le, do you have any 10 questions for Mr. Glick? 11 JUDGE LE: This is Judge Le. I have no questions 12 either. 13 JUDGE VASSIGH: Okay. Thank you. 14 Mr. Glick, that was your opening. I wanted to 15 see if you have any further arguments you would like to 16 present on the statute of limitations issue before we move 17 to Franchise Tax Board's presentation. At this point you 18 can go ahead and unmute yourself. 19 MR. GLICK: The Franchise Tax Board has sent 20 various Notices of Proposed Assessment, and I'm claiming 2.1 that none of these notices, including the one last 22 submitted dated 4/22/2018, is not a bill. It is not an 23 assessment. Period. Thank you. 2.4 JUDGE VASSIGH: This is Judge Vassigh.

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you, Mr. Glick.

We will move on at this point to Franchise Tax
Board's presentation. Whenever you're ready, please
begin.

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PRESENTATION

MR. KWOK: Thank you, Judge Vassigh. And good morning to you and Judge Le and Judge Wong. My name is Peter Kwok, and I'm here with David Hunter on behalf of the Franchise Tax Board.

The primary issue in this case was whether or not Mr. Glasser was entitled to exclude capital gains from his 2013 California tax return, but now that issue has been conceded, I will not address that issue. And so the only remaining issue in this case is whether or not the FTB timely assessed the tax deficiency against Mr. Glasser.

If you can turn with me to Exhibit C, there's a copy of the Notice of Proposed Assessment that was sent to Mr. Glasser. As you can see from Exhibit B, Mr. Glasser's 2013 tax return was received by the FTB on July 15th, 2014, and the date of the Notice of Proposed Assessment was April 2nd, 2018, which was within four years of receipt of Mr. Glasser's 2013 return.

Now, Section 19057 of the California Revenue &

Taxation Code only requires that the FTB mail a Notice of

Proposed Deficiency Assessment within four years after the

1 return was filed. There's no requirement that the FTB 2 file a tax bill or a final assessment. The only 3 requirement is that the FTB mail a Notice of Proposed 4 Deficiency. And as we can see from Exhibit C, that Notice 5 of Proposed Assessment was filed within four years of 6 FTB's receipt of the 2013 tax return. 7 And just based on that, we respectfully ask that the panel sustain this action about by the FTB. 8 9 JUDGE VASSIGH: This is Judge Vassigh. 10 you, Mr. Kwok. I do have a question for you. You

you, Mr. Kwok. I do have a question for you. You mentioned on Exhibit B Appellant's California income tax return for 2013 that FTB had received that and that the date is on the return. Can you show us where you see FTB's receipt date.

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MR. KWOK: Sure. It's that handwritten note at the very top. It's somewhat difficult to read, but it says 7 dash 12 dash 17.

JUDGE VASSIGH: Okay. Thank you, Mr. Kwok. This is Judge Vassigh again.

Mr. Glick, I would just like to ask you -- if you can unmute yourself for a moment, I would like to ask you if you agree that that return was filed at that time?

MR. GLICK: Yes, I agree that the return was filed on July 15th, 2014.

JUDGE VASSIGH: Okay. Thank you.

1 This is Judge Vassigh. I would like to ask 2 Judge Wong if he has any questions for Franchise Tax 3 Board. JUDGE WONG: This is Judge Wong. I have no 4 5 questions. Thank you. 6 JUDGE VASSIGH: Thank you. And I'd like to ask 7 Judge Le if he has any questions for Franchise Tax Board. 8 JUDGE LE: This is Judge Le. I have no questions 9 for Franchise Tax Board. 10 JUDGE VASSIGH: Thank you very much. 11 We are ready to conclude. Oh, I actually wanted 12 to see if, Mr. Glick, do you have a rebuttal? Would you like to represent five minutes of rebuttal? 13 14 MR. GLICK: I don't. 15 JUDGE VASSIGH: Thank you, Mr. Glick. 16 We are ready to conclude this hearing. 17 record is now closed. 18 Thank you everyone for appearing today. 19 thank you to the staff at OTA who have made sure that 20 today's web hearing ran as smoothly as possible. Thank 2.1 you to Ms. Alonzo for dealing with the echo in 22 transcribing this hearing. I know that was difficult. Ιt 23 was difficult to hear it. 2.4 This matter is now submitted to the panel to

privately confer and decide the issue. We will aim to

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send you a written opinion of our decision within 100 days. Today's hearing in the Appeal of Glasser is now adjourned, and OTA will now adjourn for today. Thank you, everyone. Have a wonderful day. (Proceedings adjourned at 9:58 a.m.)

HEARING REPORTER'S CERTIFICATE I, Ernalyn M. Alonzo, Hearing Reporter in and for

the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this [!DAY OF DEPO] day of [!MONTH OF DEPO], [!YEAR OF DEPO].

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ERNALYN M. ALONZO

HEARING REPORTER